

IN THE DISTRICT COURT FOR MUSKOGEE COUNTY
STATE OF OKLAHOMA

WINN & ASSOCIATES, PLLC,
An Oklahoma Professional Limited
Liability Company,

Plaintiff,

v.

Case No. CJ-2013-348

EMCARE PHYSICIAN
PROVIDERS, INC.,
A Missouri Corporation,

EMCARE PHYSICIAN
SERVICES, INC.,
A Delaware Corporation,

EMCARE, INC.,
A Delaware Corporation,

EMCARE HOLDINGS, INC.
A Delaware Corporation,

ENVISION HEALTHCARE
HOLDINGS, INC.
A Delaware Corporation,

Defendants.

STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
FILED
2013 AUG 21 AM 11:24
PAULA SEXTON
COURT CLERK

PETITION

COMES NOW Plaintiff Winn & Associates, PLLC, by and through counsel, and hereby alleges and states for its claim against Defendants as follows:

PARTIES

1. Plaintiff Winn & Associates, PLLC, is an Oklahoma Professional Limited Liability Company with its principal place of business in the State of Oklahoma, and conducts business in this particular judicial district.

2. Defendant EmCare Physician Providers, Inc. is a Missouri corporation, engaged in the business of providing physician services for emergency departments, and conducts business in this particular judicial district.

3. Defendant EmCare Physician Services, Inc. is a Delaware corporation engaged in the business of providing physician services for emergency departments, and conducts business in this particular judicial district.

4. Defendant EmCare, Inc. is a Delaware corporation engaged in the business of providing physician services for emergency departments, and conducts business in this particular judicial district.

5. Defendant EmCare Holdings, Inc. is a Delaware corporation engaged in the business of providing physician services for emergency departments, and conducts business in this particular judicial district.

6. Defendant Envision Healthcare Holdings, Inc., is a Delaware corporation engaged in the business of providing outsourced medical services, and conducts business in this particular judicial district.

7. Upon information and belief, EmCare Physician Providers, Inc. (hereafter "Defendant") is so organized and controlled by EmCare Physician Services, Inc., EmCare, Inc., EmCare Holdings, Inc., and/or Envisions Healthcare Holdings, Inc., and/or some other subsidiary thereof (collectively, the "Alter Ego Defendants"), and Defendant's affairs so conducted that it is a mere instrumentality, agent, and/or alter ego of one or more of the Alter Ego Defendants, and as such, the corporate distinctions between Defendant and the Alter Ego Defendants are a sham and should be set aside for the purposes of protecting the rights of Plaintiff and accomplishing justice.

VENUE & JURISDICTION

8. Plaintiff incorporates the allegations set forth above as if fully set forth and alleged herein.

9. Venue is appropriate in this Court pursuant to 12 O.S. §§ 134, 137; and 143. Likewise, this Court retains subject matter jurisdiction, as well as personal jurisdiction over Defendants pursuant to 12 O.S. § 2004.

FACTS

10. Plaintiff incorporates the allegations set forth above as if fully set forth and alleged herein.

11. At all times material, Plaintiff Berry E. Winn, M.D., PLLC has operated a staffing service that expends significant resources and effort to contract with physicians and make them available for the provision quality medical services to third parties.

12. At all times material, Defendants have had a contract with Muskogee Regional Medical Center ("Hospital") to provide Hospital with physicians to staff its Emergency Department.

13. On April 2, 2012, Defendants and Plaintiff entered into a Professional Practitioner Services Agreement ("Agreement"), in which Plaintiff agreed to make physicians available to Defendants for the purpose staffing Hospital's Emergency Department.

14. The Agreement features a non-interference clause containing terms requiring Defendants to pay Plaintiff an amount of \$35,000 for every one of Plaintiff's physicians that Defendants retain, employ, or contract with directly for a period of one year following the termination of the Agreement.

15. The terms referenced above were negotiated in an arms-length transaction between the parties and their legal counsel over a period in excess of one month prior to the execution of the final Agreement between the parties.

16. The Agreement between the parties was terminated as of April 1, 2013.

**FIRST CLAIM FOR RELIEF
(Breach of Contract)**

17. Plaintiff incorporates the allegations set forth above as if fully set forth and alleged herein.

18. Beginning on April 2, 2013, Defendants began directly retaining, employing, and/or contracting with various physicians under contract with Plaintiff.

19. As of the filing of this Petition, Defendants have directly retained, employed, and/or contracted with nine (9) physicians under contract with Plaintiff.

20. Plaintiff has sent multiple invoices to Defendants, requesting payment pursuant to the Agreement of \$35,000 per physician that Defendants have directly retained, employed, or contracted with following termination of the Agreement.

21. To date, Defendants have not paid any of Plaintiff's above-referenced invoices, which now total \$315,000.

22. Defendants are in breach of the Agreement by refusing to pay the \$315,000 owed to Plaintiff under the Agreement.


23. Plaintiff has suffered actual damages, as well as consequential damages, as a result of Defendants' breach.

24. In addition to actual and consequential damages, Plaintiff is entitled to attorney fees expended in pursuit of this action under 12 O.S. § 936.

WHEREFORE, Plaintiff prays for judgment against Defendants for actual damages arising from Defendants' breach, including, but not limited to, the \$315,000 owed to Plaintiff under the Agreement, as well as consequential damages flowing from Defendants' breach, the costs of this action, the attorney fees incurred in pursuit of this action, and any such other further relief that the Court deems just and proper.

Respectfully submitted,

BEST & SHARP

A handwritten signature in cursive script, reading "Timothy G. Best". The signature is written in dark ink and is positioned above a horizontal line.

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